

Date Mailed
May 26, 2000

BEFORE THE
PUBLIC SERVICE COMMISSION OF WISCONSIN

Investigation Into What Constitutes a Trade Secret Under
Wis. Stat. §§ 19.36(5) and 134.90(1)(c) and Information
Which Would Aid a Competitor Under Wis. Stat. § 196.14
for Purposes of Applying Exemptions to Disclosure of
Commission Records Under the Public Records Law

05-GF-103

**NOTICE OF PROCEEDING
AND
INVESTIGATION**

Comments Due: Monday, June 26, 2000 - Noon	Address Comments To: Lynda L. Dorr, Secretary to the Commission Public Service Commission P.O. Box 7854 Madison, WI 53707-7854 FAX (608) 266-3957
FAX Due: Friday, June 23, 2000 – Noon	

THIS IS A PROCEEDING to gather information to assist the Commission in administering its obligations under Wis. Stat. §§ 19.31, *et. seq.*, the Public Records Law, and Wis. Stat § 196.14. All investor-owned utilities and price regulated telecommunications utilities shall file comments in response to this notice no later than June 26, 2000. The Commission invites Wisconsin Public Power, Inc., Wisconsin Industrial Energy Group, Citizens' Utility Board, Municipal Electric Utilities of Wisconsin, Wisconsin Federation of Cooperatives, Wisconsin State Telecommunications Association, Wisconsin Newspaper Association, and Wisconsin Broadcasters Association to comment. Any other person may file comments as well.

Under the Public Records Law, all "records" (as defined in Wis. Stat. § 19.32(2)) are presumptively open for public inspection. The law exempts from disclosure records containing trade secrets, as defined in Wis. Stat. § 134.90(1)(c). In addition, pursuant to Wis. Stat. § 196.14, any information that would aid a competitor of a public utility in competition with the public utility may be withheld from public inspection.

Under Commission guidelines, documents and other records may be confidentially filed.[?] When a record request includes a confidential filing, the Commission gives the filer three working days to submit any new or later information in support of confidentiality after which the

[?] A draft revision of these guidelines is attached to this notice.

Commission's records custodian makes a determination on whether the records (or portions of records) are exempt from disclosure under one or more exceptions to the Public Records Law including, most commonly, the "trade secrets" or "aid a competitor" exceptions identified above.

Due to the increasingly complex and varied industries the Commission regulates, the determination to withhold records filed as confidential is often difficult. The records custodian must rely on the comments of the filer and the advice of technical staff in making the determination as to what is information sufficient to rebut the presumption of public access to government records.

The public records custodian has released records over the objection of the filer. In addition, the filer has abandoned its request for confidentiality when the records are requested. It is reasonable, therefore, to believe that some filers are incorrectly claiming confidentiality.

In this docket, the Commission intends to investigate the kinds of information which the companies the Commission regulates, other entities which comprise the energy and telecommunications industries, and other interested persons believe constitutes a trade secret or information that would aid a competitor. Comments should address at least the following points:

1. The types of filers of confidential information, e.g., public utilities, utility holding companies, independent power producers, transmission entities, and telecommunications companies.
2. The types of records filed as confidential, e.g., purchase power contracts, market pricing information, and audit or inspection reports.
3. The process or criteria used by filers to determine to request confidential handling by the Commission.
4. As matters of law, what information constitutes a trade secret or information which would aid a competitor of a public utility in competition with the public utility.
5. The applicability of any other exceptions under the Public Records Law.
6. The meaning of "public utility" in the context of Wis. Stat. § 196.14.
7. The reasonableness of the Commission's confidential handling guidelines.

The Commission does not discriminate on the basis of disability in the provision of programs, services, or employment. Any person with a disability who needs accommodations to participate in this proceeding or who needs to obtain this document in a different format should contact the individual listed below.

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Questions regarding this matter may be directed to Edward S. Marion, General Counsel,
at (608) 266-1264.

Dated at Madison, Wisconsin, _____

By the Commission:

Lynda L. Dorr
Secretary to the Commission

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Attachment